

Beck, Ross, Bismonte & Finley, LLP

ATTORNEYS AT LAW

Fairmont Plaza

50 W. San Fernando Street, Suite 1300

San Jose, California 95113

(408) 938-7900

(408) 938-0790 Fax

Craig Alan Hansen
chansen@beckross.com

February 14, 2008

By E-Filing

Hon. Susan Illston
United States District Court
Northern District of California
450 Golden Gate Ave
San Francisco, CA 94102

Re: *Noble v. Kiewit Pacific Co., et al., Case No. C08-666-SI*

Dear Judge Illston:

This law firm represents Richard Noble who is bed-ridden, on a respirator and dying of cancer. Following the Court's February 13, 2008 Order Granting Plaintiffs' Motions to Shorten Time and to Expedite Deposition of Richard Noble, the parties have agreed to conduct Mr. Noble's deposition on February 21 and 22 of next week. Regrettably the Parties are unable to agree on the time of day the deposition will begin, the location of the deposition or which side will begin the examination. Accordingly, we would respectfully ask that the court conduct a brief telephone conference to assist the parties in resolving these matters.

A copy of the e-mail correspondence leading up to this request is attached for the court's reference. Here is a brief summary of those discussions:

Time of Deposition

We received an e-mail from defendants' counsel, Ms. Kari Levine, this morning advising that "The depo will be 2/21 from 1-5 pm and 2/22 from 1-5 pm." In response, we informed Ms. Levine that Mr. Noble's deposition must take place at his residence in Concord, because he requires access to his breathing apparatus and medications. We further informed her that Mr. Noble's current medical condition and regime mandate a start time of 9:00 a.m. each day.

Ms. Levine responded that she "cannot begin at 9 am in Concord on either day," but provided no reason why she (or any other lawyer from Seyfarth Shaw) could not attend.

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In any event, Mr. Noble's deposition should begin in the morning when his level of clarity and comfort are high. His condition tends to decline as the day progresses and an afternoon deposition would cause him to suffer undue stress and fatigue. We would therefore ask for the court to instruct the parties to begin the deposition at 9:00 a.m.

Sequence of Examination

The Court will recall that Plaintiff is seeking to preserve Mr. Noble's testimony for trial. As set forth in plaintiffs' recent moving papers, because Mr. Noble likely will not live to testify at trial, his deposition will be a "trial deposition." We expect the videotaped deposition to be viewed by the court and jury at that time. Under these circumstances, we believe that the sequence of Mr. Noble's examination should be the same as if we were at trial—with plaintiffs' counsel beginning with direct examination, and defense counsel following with cross-examination. Ms. Levine disagrees with that approach. Plaintiffs are concerned with further delays in securing Mr. Noble's testimony. Accordingly, we would ask for the court's clarification on how to best preserve Mr. Noble's testimony for trial.

Plaintiffs are available for a telephone conference at any time today, tomorrow, or Friday. Ms. Levine has indicated that she is in depositions today and tomorrow but can "take a break and call in to a designated dial in number." We will wait for the court's instruction regarding if and when such a telephone conference will proceed.

The court's time and attention to this matter is greatly appreciated.

Yours very truly,

/s/Craig Alan Hansen

Craig Alan Hansen

Encl.

cc: Kari Levine (by *e-filing*)
Adrienne Publicover (by *e-mail*)

Craig A. Hansen

From: Levine, Kari [klevine@seyfarth.com]
Sent: Thursday, February 14, 2008 11:55 AM
To: Craig A. Hansen; Adrienne.Publiccover@wilsonelser.com
Cc: Ron C. Finley; Alfredo A. Bismonte; Nelson, Adrienne
Subject: Re: Noble v. Kiewit: Richard Noble Deposition

Just so you are clear, I am in depositions all day today and tomorrow. Therefore, we will need to schedule a specific time with Judge Illston so I can take a break and call in to a designated dial in number. Please coordinate this with the Judge.

----- Original Message -----

From: Levine, Kari
To: 'chansen@beckcross.com' <chansen@beckcross.com>; 'Adrienne.Publiccover@wilsonelser.com' <Adrienne.Publiccover@wilsonelser.com>
Cc: 'rfinley@beckcross.com' <rfinley@beckcross.com>; 'abismonte@beckcross.com' <abismonte@beckcross.com>; Nelson, Adrienne
Sent: Thu Feb 14 13:43:26 2008
Subject: Re: Noble v. Kiewit: Richard Noble Deposition

We are going to need a telephone conference with the Judge as we do not agree to allow you to do direct before we take our deposition. It is our position that this is our deposition and your examination may follow. Also, I cannot begin at 9 am in Concord on either day.

----- Original Message -----

From: Craig A. Hansen <chansen@beckcross.com>
To: Levine, Kari; Adrienne.Publiccover@wilsonelser.com <Adrienne.Publiccover@wilsonelser.com>
Cc: Ron C. Finley <rfinley@beckcross.com>; Alfredo A. Bismonte <abismonte@beckcross.com>; Nelson, Adrienne
Sent: Thu Feb 14 13:29:43 2008
Subject: RE: Noble v. Kiewit: Richard Noble Deposition

Dear Ms. Levine,

Richard's deposition must take place at his residence in Concord, because he is on a breathing apparatus and needs to be close to his medications. Accordingly, the deposition will need to be conducted at his residence, as he cannot travel either to our office or yours.

Further, due to Richard's medical regime, we will need to start the deposition at 9:00 am in the morning.

Finally, because we expect this to be a trial deposition, we plan to start the deposition with 2-3 hours of direct examination. You and Ms. Publicover can then follow and take whatever time you require (within reasonable limits) for cross-examination.

Accordingly, we will begin Richard's deposition at 9:00 a.m. on February 21, 2008 at his residence in Concord. The address is:

4266 Dubhe Court
Concord, CA 94521

We will proceed as long as Richard is able to and continue the deposition the following day (as necessary) at 9:00 a.m.

If you have any objections, please let us know by 5:00 p.m. today and we will ask Judge Illston to conduct a telephone conference to help us sort this matter out. Otherwise, we will see you at the Noble residence next Thursday at 9:00 a.m. Please understand that it is Richard's deteriorating health and the need to preserve his testimony -- on behalf of all parties -- which requires a quick resolution of this issue. We hope for your

cooperation under these circumstances.

Craig Alan Hansen
Beck, Ross, Bismonte & Finley, LLP
50 West San Fernando Street, Suite 1300
San Jose, CA 95113
Tel: 408.938.7900
Fax: 408.938.0790
email: chansen@beckross.com
www.beckross.com

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Thank you, Beck, Ross, Bismonte & Finley, LLP _____

-----Original Message-----

From: Levine, Kari [mailto:klevine@seyfarth.com]
Sent: Thursday, February 14, 2008 9:46 AM
To: Craig A. Hansen; Adrienne.Publiccover@wilsonelser.com
Cc: Ron C. Finley; Alfredo A. Bismonte; Nelson, Adrienne
Subject: Re: Noble v. Kiewit: Richard Noble Deposition

We will be taking the lead in the deposition and cannot do 2/20. The depo will be 2/21 from 1-5 pm and 2/22 from 1-5 pm. Please have hand served on Adrienne Nelson in my office the ordered documents plaintiffs must produce before the close of business tomorrow.

Thanks,
Kari

----- Original Message -----

From: Craig A. Hansen <chansen@beckcross.com>
To: Levine, Kari; Publiccover, Adrienne C.
<Adrienne.Publiccover@wilsonelser.com>
Cc: Ron C. Finley <rfinley@beckcross.com>; Alfredo A. Bismonte
<abismonte@beckcross.com>
Sent: Thu Feb 14 10:54:41 2008
Subject: Noble v. Kiewit: Richard Noble Deposition

Dear Ms. Levine and Ms. Publiccover,

Attached is the court's order granting plaintiffs' motion for an expedited deposition of Richard Noble (and related motion to shorted time).

You'll note that the court's order provides that Mr. Noble's deposition shall proceed "on either February 20 and 21 or February 21 and 22, whichever is more convenient for the defendants." Accordingly, please confer amongst yourselves and let us know as soon as possible which of those dates are more convenient for you so that we may plan accordingly.

We look forward to hearing from you.

Craig Alan Hansen

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San Jose, CA 95113

Tel: 408.938.7900

Fax: 408.938.0790

email: chansen@beckcross.com <<mailto:chansen@beckcross.com>>

www.beckcross.com

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Thank you, Beck, Ross, Bismonte & Finley, LLP

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